

\$~ 4.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 11.11.2021

Pronounced on: 25.11.2021

+ **CONT.CAS(C) 429/2021**

SONALI BHATIA

..... Petitioner

Through: Ms. Priya Hingorani, Senior Advocate
with Mr. Himanshu Yadav &
Mr. Anirudh Jamwal, Advs.

versus
ABHIVANSH NARANG

..... Respondent

Through: Respondent-in-person.

CORAM:

**HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH**

JUDGMENT OF THE COURT

1. The present contempt petition has been filed by the Petitioner under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971, alleging contempt of order dated 22.12.2020 passed by the Family Court in HMA No. 638/2018 and order dated 11.02.2021 passed in MAT. APP. (F.C.) No. 20/2021 by this Court.
2. Briefly stated the facts giving rise to the filing of the present contempt petition are as under.
3. The marriage between the Petitioner and respondent was solemnized on 18.11.2013 following Hindu rituals and customs.

4. The Respondent filed a Divorce Petition bearing no. 638/2018 under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 on 03.04.2018. The said petition is still pending adjudication.

5. On 07.08.2018, the Petitioner filed an application under Section 24 of the Hindu Marriage Act, 1955, alongwith her Financial Affidavit, seeking interim maintenance pendente-lite at the rate of Rs. 1,02,000/- per month and sum of Rs. 1,00,000/- towards litigation expenses. In addition, the Petitioner also claimed a sum of Rs. 2,50,000/- towards furnishing the individual household and an independent car.

6. The Family Court vide the order dated 22.12.2020 partially allowed the said Application of the Petitioner. The operative portion of the said order reads as under:

“14. Considering the totality of facts and circumstances of the case, social and financial position and status of the parties, in my view it is appropriate, if the respondent/wife is granted a monthly maintenance of Rs.35,000/- per month. Accordingly, the petitioner/husband is ordered to pay an amount of Rs.35,000/- (Rs. Thirty Five Thousand) per month to the respondent/wife as maintenance from the date of filing of the application. The amount of maintenance received by the respondent/wife in this case or under any proceedings is liable to be adjusted. The petitioner/husband may clear arrears of maintenance by way of installments within six months. The petitioner/husband is further ordered to pay Rs.75,000/- (lump sum) to the respondent/wife towards litigation expenses.”

7. The Respondent being aggrieved by the said interim maintenance order filed an appeal bearing no. MAT. APP. (F.C.) No. 20/2021 along with an application to seek stay of the operation of the said order.

8. This Court, vide order dated 11.02.2021 passed in MAT. APP. (F.C.)

No. 20/2021 issued notice, and directed the respondent to comply with the interim maintenance order dated 22.12.2020 passed by the Family Court. The operative portion of the order dated 11.02.2021 passed by this Court reads as under:

“....List on 14.07.2021. On the next date, the parties should remain personally present in Court.

The appellant shall, in the meantime, comply with the order passed by the Family Court without prejudice to his rights & contentions.”

9. The Respondent has, however, failed to comply with the directions passed by this court and the family court. Consequently, the Petitioner has preferred the present Contempt Case. Notice was issued to the respondent on 14.07.2021, which was accepted by the Respondent's counsel on his behalf. Two weeks time was granted to file a reply, requiring him to make a full and complete disclosure of his income and expenditure in the last 12 months from all sources. The Respondent filed his reply dated 10.08.2021.

10. Vide orders dated 12.08.2021 and 08.09.2021, we directed the respondent to remain personally present in the court. However, the Respondent did not appear before this Court on 09.09.2021 – the date fixed. Different excuses were furnished by the Respondent and his counsel for his absence. Whereas his counsel stated that the Respondent had undergone an eye surgery, the Respondent himself stated – while appearing virtually, that he had not undergone any eye surgery. In view of the same, on 09.09.2021, we were constrained to issue bailable warrants for his production, returnable on 13.09.2021.

11. The respondent, when the matter was listed on 09.09.2021, chose to

withdraw his matrimonial appeal, and the same was dismissed as withdrawn accordingly.

12. On 13.09.2021, the Respondent appeared and we heard the submissions of learned counsels. The relevant extract of our order dated 13.09.2021 reads as follows:

"2. The present contempt petition has been preferred on account of the alleged and deliberate non-compliance of our order dated 11.02.2021 passed in MAT.APP.(F.C.) 20/2021 and also the Order dated 22.12.2020 passed by the Ld. Principle Judge, Family Court, Patiala House, New Delhi in HMA No. 638/2018. Upon issuance of notice the respondent has filed reply. Along with the reply the respondent has placed on record the statement of account of his bank account maintained with State Bank of India in the name of his firm M/s. Equal Minerals for the period 01.08.2020 to 01.09.2020, 01.12.2020 to 31.12.2020, 01.01.2021 to 31.01.2021 01.02.2021 to 04.03.2021, and 01.03.2021 to 31.03.2021.

3. At this stage, we may observe that the petitioner has filed a rejoinder wherein the petitioner has brought on record the fact that the respondent deliberately did not disclose either before the Family court or before us the status of several other bank accounts maintained by him particulars of which could be gathered from the respondent's Income Tax Return. The relevant averments of the petitioner contained in the rejoinder read as follows:

<i>Bank Accounts of the Respondent</i>	<i>Whether declared by Respondent in his Financial Affidavit</i>	<i>Periods for which bank statements not filed</i>
<i>SBI A/c no. I 00000030007009989 (Self)</i>	<i>Yes</i>	<i>April, 15 to May, 15 Oct. 18</i>

<i>SBI A/c no. 00000010004630309 (M/s Equal Minerals)</i>	<i>Yes</i>	<i>Sept, 15 to March, 16 Sept, 16 to March, 17 April, 17 to March, 18 June, 18 to Oct, 18</i>
<i>Indian Overseas (A/c no not known)</i>	<i>No (revealed from his ITRs)</i>	<i>Not a single statement filed</i>
<i>Axis Bank A/c (A/c no not known)</i>	<i>No (revealed from his ITRs)</i>	<i>Not a single statement filed</i>
<i>Punjab National bank Joint A/c no 3063000100444407</i>	<i>Yes</i>	<i>Not a single statement filed</i>
<i>SBI Joint A/c no. 10211443836</i>	<i>No (revealed from his compliance affidavit dated 23.07.2019)</i>	<i>Not a single statement filed</i>

4. The petitioner has also pointed out the incomes reflected by the respondent in his own ITR for Assessment Year 2012-2013 upto Assessment Year 2017-2018, which also reflect the capital invested by the respondent with his firm (M/s Equal Minerals) and the particulars therefore as follows:

<i>ITR</i>	<i>Gross Profit (p.a.)</i>	<i>Total income (p.a.)</i>	<i>Capital with Firm</i>
<i>AY 2012-13</i>	<i>21,37,273</i>	<i>7,90,789</i>	<i>42,18,674</i>
<i>AY 2013-14</i>	<i>16,49,789</i>	<i>8,54,211</i>	<i>43,99,247</i>
<i>AY 2014-15</i>	<i>13,35,444</i>	<i>9,86,539</i>	<i>48,91,038</i>
<i>AY 2015-16</i>	<i>14,26,106</i>	<i>11,59,548</i>	<i>59,23,317</i>

AY 2016-17	16,16,538	10,12,947	63,81,379
AY 2017-18	15,79,540	10,35,994	70,81,702

5. *The petitioner points out that the respondent purportedly advanced huge amounts of loan for his parents which are also reflected in his ITRs, and the particulars thereof are as follows:*

ITRs	Loan given by Respondent to his father (Ashok Narang)	Loan given by Respondent to his mother (Alka Narang)
AY 2014-15	63,60,000	11,15,000
AY 2015-16	1,26,82,894	60,10,000
AY 2016-17	1,34,83,733	49,84,000
AY 2017-18	60,60,112	47,24,000

6. *The submission of the petitioner is that in the business of the respondent which is to supply mineral water to several establishments under his own brand name, there is a lot of cash generation. The petitioner has tabulated some of the cash deposits reflected in the respondent's bank accounts on the basis of the statements provided by the respondent himself. She points out that after the dispute arose between the parties and the divorce petition was preferred in May 2018, the cash deposits dropped drastically. The details of the cash deposits are as follows:*

Period	Cash deposited by Respondent
April, 15 to Aug, 15 (5 months)	29,85,000
April, 16 to Aug, 16 (5 months)	19,74,000

<i>April, 18 to May, 18 (2 months)</i>	8,92,000
19.8.2020	1,50,000
24.8.2020	1,00,000
8.12.2020	2,00,000
29.12.2020	2,00,000
21.1.2021	50,000
30.1.2021	50,000
16.2.2021	50,000
25.2.2021	50,000
1.3.2021	50,000
8.3.2021	50,000
17.3.2021	50,000
23.3.2021	50,000

7. The petitioner has also pointed out that the respondent is a Director in M/s. Euro Polymers Pvt. Ltd. and he has been receiving Director's remuneration which is also reflected in his ITRs for AY 2012-2013 to AY 2016-2017 particulars whereof are as follows:

ITR	Director's Remuneration / Commission Received
AY 2012-13	2,40,000
AY 2013-14	3,00,000
AY 2014-15	3,00,000
AY 2015-16	3,90,000
AY 2016-17	2,13,200

8. *The petitioner points out that the respondent is the sole proprietor of M/s. Equal Minerals and is a Director in M/s. Euro Polymers Pvt. Ltd. which is a family-owned concern. He and his mother are the only two Directors in the said company. He is also a Director in M/s Equal Plastics Pvt. Ltd. which is admittedly the company of the Petitioner's father. Various trademarks are held by M/s Equal Minerals and M/s Euro Polymers Pvt. Ltd.*

9. *The petitioner has also pointed out that the respondent is leading a lavish lifestyle. The family owns a four-storey bungalow at C-63, Inderpuri, New Delhi of which three floors are owned by the respondent's family, valued at over Rs. 15 crores. He also has a rented accommodation at House No. 1816, (ANNEX), First Floor, Sector 34-D, Chandigarh. He also owns Plot No. 212, Phase 2, Industrial Area, Panchkula, Haryana. The petitioner claims that the respondent has beneficial interest in the family property at 3780-82, Reghar Pura, Karol Bagh, New Delhi. The respondent is driving two cars namely a Corolla Altis and a Ford Ecosport. He also owns two motorbikes i.e. Royal Enfield. The petitioner points out that the respondent has disclosed in his ITR for the AY 2017-18 that he has sold gold weighing 474.10 grams valued at Rs. 8,72,748/- and 143.95 Crt. of diamond valued at Rs. 15,94,000/-. The petitioner submits that it is her jewelry, which was kept by the respondent when the petitioner was turned away from her matrimonial home and this jewelry was evidently sold by the respondent. The petitioner has also pointed out that when the parties were together, they were leading luxurious lifestyle. They travelled abroad to celebrate new year's and took holidays to different parts of the world such as Canada, Malaysia, Singapore.*

10. Coming back to the bank statements filed by the respondent along with his reply, it is seen from these statements of account that even if one were to ignore other bank accounts that the respondent may be holding and operating, particulars of some of which disclosed by the

petitioner on the basis of the information gathered by her from respondent's ITRs, the respondent was continuously maintaining a healthy balance in the aforesaid bank account i.e. the State Bank of India which continuously is in the range of Rs. 2 lakhs and more. Despite having sufficient liquidity, the respondent did not comply with the orders passed by the Family Court on 20.12.2020 as well as our order dated 11.02.2021. On our query the respondent who is present in person states that he preferred to maintain the balance and not pay the amount payable to the petitioner on account of his business. Ms. Raju submits that since notice had been issued in MAT.APP.(F.C.) 20/2021 wherein the respondent had challenged the order granting maintenance to the petitioner herein, the amount was not paid. At the same time, she does not deny the fact that we had ourselves directed while passing order dated 11.02.2021 in the respondent's MAT.APP.(F.C.) 20/2021 that he shall continue to comply with the order passed by the Family Court during the pendency of the appeal...." (emphasis supplied)

13. After noting the aforesaid violations, we found the Respondent guilty of contempt, and issued show cause notice to him requiring him to show cause why he should not be punished. We also directed him to file an affidavit making a complete and full disclosure of his bank accounts including those highlighted by the petitioner having not been disclosed. The operative portion of the order dated 13.09.2021 passed by this Court reads as under:

10....It is therefore clear to us that the respondent is in deliberate, intentional and conscious breach of inter alia our order dated 11.02.2021 passed in MAT.APP.(F.C.) 20/2021 which, the respondent has also withdrawn. Therefore, the order passed by the Family Court on 20.12.2020, in so far as the respondent is concerned has now attained finality. We, therefore, find the respondent guilty of contempt and issue notice to him to show cause as to why he should not be

punished. The respondent is directed to file an affidavit making full and complete disclosure of all his bank accounts including those highlighted by the petitioner as not having been disclosed. He shall also provide complete list of the loans which he granted to his parents and which are reflected in his own ITRs. The statement of all the bank accounts shall be filed from 01.04.2017 onwards. He shall also place on record the statement of accounts, of the account held in State Bank of India in the name of his firm M/s. Equal Minerals, for the months for which they have not been placed on record, and up to date till 31.08.2021. The affidavit along with the documents shall be filed by the respondent within two weeks. It is made clear that no further time shall be granted. On the next date the respondent is bound down to be personally present before the Court. (emphasis supplied)

14. The Respondent filed his compliance affidavit dated 28.09.2021 pursuant to the order dated 13.09.2021 passed by this Court. The Respondent annexed copies of bank statements along with the affidavit, and categorically stated that he does not have any other accounts, except the ones of which the statements were filed. The Respondent does not state that he does not – or did not have, the three accounts mentioned in the Rejoinder filed by the Petitioner, of which he had not filed any Statement of Account. These three Accounts were forming part of the Tabulation contained in the Rejoinder, extracted by us in our order dated 13.09.2021. The Respondent has not filed the Statements of Account of any of these two accounts, despite our specific direction. He also does not deny having a Joint Bank Account with Punjab National Bank A/c No.3063000100444407. However, he has not filed any statement of account of the said Bank Account.

15. The Respondent has further stated that he had taken a home loan for his father, in his own name for an amount of Rs. 1,50,00,000/- (Rupees One

Crore and Fifty Lakhs only) through Axis Bank, and another home loan in his own name for a sum of Rs. 1 Crore on his father's asking, from Citi Bank. The respondent has stated that the said loan amounts have been entirely repaid by his father through his own personal funds, and through his personal Bank Accounts. Another affidavit reiterating the same has been filed by the father of the respondent, which forms a part of the compliance affidavit of the respondent as Annexure-B. The Father of the respondent – in his affidavit, has further refused to disclose any of his bank statements. The respondent has also stated that he has outstanding loan liability of Rs. 8 lakhs (approx.) to be repaid to various banks, and has also stated to have a balance of Rs.1,10,000/- (Rupees One Lakh and Ten Thousand only) cumulatively in all his bank accounts.

16. We had taken note of the stand of the Respondent/ his father – that he/ his father are not obliged to disclose their Bank accounts statements from which such large amounts of loan – taken by the Respondent, had been repaid. On 30.09.2021, the Respondent was put to notice in the following terms:

3. We may notice that along with the affidavit of the respondent, he has also filed an affidavit of Mr. Ashok Kumar Narang – his father, wherein, Mr. Narang has stated that he is not willing to disclose his bank statements. We may make it clear that we have not asked him to disclose his bank statements. However, the respondent has sought to make out a case that loans to the tune of Rs. 2.5 crores taken in his name, were taken for the benefit of the father and that the loans have been repaid by the father. Since the loans have been taken in the name of the respondent, it would be for the respondent to satisfy us that they were repaid by his father and not by him, otherwise, we would be entitled to draw our conclusions.

4. We have made it clear to the respondent that non-production of the relevant documents will lead to drawl of adverse inference against him. (emphasis supplied)

17. The petitioner has filed her objections dated 22.10.2021 to the compliance affidavit dated 28.09.2021 filed by the respondent. Ms. Priya Hingorani, learned Senior Advocate representing the petitioner, has highlighted discrepancies in the compliance affidavit filed by the respondent. The objection of the petitioner is that the respondent has failed to comply with the order dated 13.09.2021 passed by this court. The Petitioner has placed on record a chart, outlining the discrepancies with respect to the two home loans availed of by the respondent and his father, and the repayment of the said loans. The petitioner has relied on the loan statement dated 01.03.2017 addressed to the respondent by Citi bank, and has submitted that the said limited loan statement for Citibank mortgage loan no. 132579, does not disclose who re-paid the loan of Rs. 1 Crore. Another loan bearing loan no. 132579 from Axis bank, which was taken by the respondent in his individual capacity, was repaid on 22.09.2016. However, not a single statement has been produced to show who repaid the same, and how. The respondent has failed to produce any document to establish that the repayment of the said loans was done by his father, and not by him.

18. In addition to the above, the Petitioner has also pointed out that the self-proprietary concern of the respondent namely ‘Equal Minerals’ has a huge clientele to whom he supplies his products i.e. packaged drinking water, packaged carbonated water, soda pet bottles, soda and plastic containers, etc. It is pointed out by the petitioner that the said business of the

respondent is stable and he predominantly deals in cash. It is further pointed out that the cash deposits reflected in the respondent's bank account have dropped drastically after the dispute arose between the parties. The petitioner has pointed out that the respondent deposited in his bank account cash between the period of 5 months from April, 2015 to August 2015, to the tune of Rs, 29,85,000/-; between April 2016 to August, 2016 to the tune of Rs. 19,74,000/- and; between the period of 2 months from April 2018 to May 2018, Rs. 8,92,000/-. However, after the petitioner filed the application for maintenance on 07.08.2018, the cash deposits into the bank account by the respondent dropped significantly to an average of Rs. 1 lakh per month, or less.

19. The petitioner has further placed reliance on a tabulated chart showing analysis of Bank Statements of the respondent, provided by the respondent himself, to corroborate her submission that even post lockdown the business of the respondent has been running well. It is pointed out that within the period of 18 months i.e. from March, 2020 till August 2021, a sum of Rs. 1,05,29,687/- was credited into the bank account of the respondent. It is further pointed out that in the said bank account, at the end of every month, there remained an average balance of Rs. 1,62,572/-.

20. On 11.11.2021, the respondent stated that he has filed another response to our order dated 13.09.2021, and to the Petitioner's objection dated 22.10.2021. Even though the same was not on record, a copy was handed over to us by the Respondent, and we have taken the same on record.

21. The respondent has also tendered copies of communications dated 08.03.2017 from Citi Bank mortgages, communication dated 20.10.2016

from Axis Bank, communications from DLF Limited in relation to property No. ULT 141/PL2034/2033/PL2032 in the Ultima, and in respect of property no. UTL 151/PL2035/2036/2037 in the Ultima dated 24.11.2016, another three communications from DLF Limited, which have also been taken on record. We have gone through the same as well.

22. We have heard Ms. Hingorani – learned senior counsel for the petitioner. The respondent is present in person. The respondent has informed us that he has discharged his counsel and would like to make submissions. We have heard him as well. His defence is that he does not have the means to comply with the order dated 22.12.2020 passed by the Family Court and our order dated 11.02.2021. Therefore, there is no question wilful and deliberate disobedience of the said order by him – leading to civil contempt.

23. Before we examine the facts of this case, we consider it appropriate to take note of the law relating to contempt – particularly civil contempt. Section 2(b) of the Contempt of Courts Act, 1971 defines ‘Civil Contempt’ to mean “*wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.*” Section 10 of the said act empowers the High Court to punish contempt’s of subordinate Courts. It reads “*Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself*”. Section 12 of the act prescribes the punishment for contempt of court in so far as it is relevant, it read:

“12. *Punishment for contempt of court.—(1) Save as otherwise*

expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.”

24. The Supreme court in **T. Sudhakar Prasad v Govt. of A.P.**, (2001) 1 SCC 516 has held that the powers of contempt are inherent in nature. The Supreme Court and the High Courts are courts of record and by virtue of being courts of record have inherent jurisdiction to punish for contempt of themselves, and the provisions of the Constitution Article 129 and Article 215 only recognise the said pre-existing situations. The Supreme Court has also made similar observations in **Supreme Court Bar Association v. Union of India**, (1998) 4 SCC 409 and recently in **Suraz India Trust V Union of India**, 2021 SCC OnLine SC 833.

25. We may also take note of the judgment Supreme Court in **Rama Narang v. Ramesh Narang & Ors.**, (2006) 11 SCC 114. In this decision the

Supreme Court held that merely because an order or decree would be executable, would not take away the Court's jurisdiction to deal with the matter under the Contempt of Courts Act provided the Court is satisfied with the violation is such that it would warrant punishment under Section 13 of the Act. The Supreme Court further held that it would neither be in consonance with the statute nor judicial authority or principle or logic to draw any distinction between the wilful violation of the terms of a consent decree and a decree passed on adjudication.

26. It would be seen from the facts that we have already taken note of hereinabove, and the further aspects that we would now proceed to take notice that the present is not a case of mere inability on the part of the respondent in complying with the order passed by the Family Court, and by this Court. The situation is that the respondent has stubbornly and obstinately refused to comply with the said orders on completely false premise of his financial inability. Despite our repeated orders, he has failed to make a clean breast of all his accounts, incomes and expenditures.

27. The loan document from Citi bank with regard to UTL 151, The Ultima DLF Garden City, Sector 81, Gurgaon, in which the respondent is shown as to be the applicant and his father to be the co-applicant, and another loan document from the Axis Bank (handed over to us in the court) pertaining to the property bearing No. UTL 141, the Ultima DLF Garden City, Sector 8, Gurgaon, disclose that the loan has been taken on the behalf of the father of the respondent.

28. There is no document on record to rebut the presumption that the loan was primarily taken by the Respondent, and, therefore, he repaid the same.

Pertinently, in the past transactions disclosed by the respondent, he claims to have advanced large amounts of loans to his parents. Thus, it cannot be accepted that his father had repaid the loans taken by him from the above two banks. He has flatly refused to place on record the bank account details of himself/ his father to substantiate his plea that his father had repaid these loans from his own resources. It, therefore, emerges that the respondent has sought to acquire the said properties by his own funds, and only with a view to evade his liability towards the petitioner, he has used the name of his father benami. The sale deeds, or the agreements to sell with the builder, have also not been filed. This leaves us with no option but to draw an adverse inference against the respondent with regard to the funding and ownership of the said properties in favour of the respondent.

29. The bank statements of the respondent clearly show that the respondent was continuously maintaining a decent balance in the range of Rs. 1- 1.5 Lakhs and more. The same was observed by us in our earlier order dated 13.09.2021. On our pointed query, the Respondent stated that he has chosen to give precedence to his business, over compliance of the orders passed by the Family Court as well as this Court. Ms. Hingorani, counsel for the petitioner has been able to demonstrate that the respondent has falsely deposed in his compliance affidavit, and has blatantly failed to comply with the orders passed by this Court as well the family Court.

30. The respondent has falsely claimed that he maintains only those bank accounts of which he has filed his statement of accounts with his compliance affidavit. Pertinently, he does not dispute or deny the fact that he owns the other accounts taken note of hereinabove, namely Indian Overseas Bank,

Axis Bank and SBI Joint Account No. 10211443836. With his compliance affidavit, he has only filed a statement of Indian Overseas Bank for the period 07.08.2016 to 25.09.2021. However, the said statement is not continuous and complete. He has not filed a single statement of joint account maintained by him with Punjab National Bank bearing Account No. 306300010044407. The cash incomes of the respondent have substantially, over the years, and remarkably, dropped ever since disputes arose between the parties. The respondent has, therefore, stopped depositing the cash being generated in his income. It was for him to explain this phenomenon which, he has not even bothered to address despite grant of opportunity. It is obvious to us that the respondent is suppressing his true income only with a view to evade compliance of the orders passed by the Family Court and by this Court – requiring him to pay maintenance to the petitioner of entire arrears of maintenance.

31. In view of the aforesaid facts, it is abundantly clear to us that the Respondent is guilty of intentionally and deliberately violating, and not complying with the order dated 22.12.2020 passed by the Family Court and order dated 11.02.2021 passed by this Court.

32. More than adequate indulgence has been shown to the Respondent, but he chooses to be adamant and obstinate. The actions/ omissions of the Respondent in choosing to show complete disregard to the orders of the Court cannot be countenanced. If such action is permitted, it will lead to anarchy and the Rule of Law would become a casualty. The orders of the Courts would be taken lightly and breached at the own sweet will of the individual concerned. There has been no effort on the part of the respondent

to comply with the aforesaid orders. If, he had acted bona fide, he would have paid or deposited, at least, a portion of the outstanding amount to the petitioner. However, the Respondent has chosen not to pay a penny. It is the dignity and majesty of the court which needs to be preserved. The judiciary as an institution has garnered faith of the common masses as a trusted institution only because judicial orders are enforced, in an appropriate case, even at the pain of contempt. The faith posed by the people in the judiciary has to be protected in the interest of society, and also to meet the ends of justice.

33. The Supreme Court in *Ashok Paper Kamgar Union v. Dharam Godha* (2003) 11 SCC 1 dealt with civil contempt, wherein the Court observed as under:

“17. Section 2(b) of Contempt of Courts Act defines ‘civil contempt’ and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to a Court. ‘Wilful’ means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.....”

34. It has been time and again reiterated by the Supreme Court that the

orders of Courts have to be obeyed unless and until they are set aside in appeal/revision. The onus is on the party to establish and satisfy the court that the order is null and void, and therefore not executable or enforceable. However, in the present case, the respondent has withdrawn his appeal against the order of the Family Court. Thus, there is no question of his establishing that the order passed by the Family Court granting maintenance to the petitioner, or the order passed by this Court in the respondent' matrimonial appeal was null and void. Even otherwise, they cannot be considered as null and void, since they were passed by Courts of competent jurisdiction after hearing the respondent herein. The Respondent has not shown any regard towards the majesty of the court by obeying its orders. He has shown no remorse or regret for non-compliance of the aforesaid orders. If there is wilful disobedience to any judgment, decree direction, order writ or other process of a court, or wilful breach of undertaking given to the court, the contempt court shall take note of such violation, that needs to be punished. The wilful disobedience by the contemnor undermines the dignity and authority of the Courts and outrages the majesty of law. In **Ram Kishan vs. Tarun Bajaj & Ors** (2014) 16 SCC 204, the Court has delineated the contours for initiating civil contempt action. The Court observed thus:

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be

done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Comittal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”

35. The conduct of the respondent taken note of hereinabove shows that he has tried to act over smart with the Court by concealing his true income and expenditure, and the channels into which his incomes are flowing, and the manner in which they have been utilised. He has not come clean despite grant of repeated opportunities. His conduct shows that he is defiantly disobeying the orders of the Court despite being called upon to comply with them repeatedly.

36. The Supreme Court in the case of **Supreme Court Bar Association vs Union Of India & Anr** (1998) 4 SCC 409 observed the object of punishment in the case of civil contempt, and also remarked upon the jurisdiction exercised by the contempt court, to protect the administration of justice from maligned. The Court observed thus:

34. The object of punishment being both curative and corrective these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to

coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord tenant dispute. Apart from punishing the contemner the Court to maintain the Majesty of Law may direct the police force to be utilised for recover of possession and burden the contemner with costs, exemplary or otherwise.

xxxxx

42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely effects the Majesty of Law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. it is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

37. We, therefore, impose a fine upon the respondent of Rs. 2,000/- . We punish him with simple imprisonment for a term of 3 months.

38. We have considered the aspect that mere imposition of a fine of Rs.2,000/- would not meet the ends of justice, and that a sentence of imprisonment is necessary considering the fact that the arrears owed by him are far in excess of the fine imposed, and the fact that he has deliberately, wilfully, intentionally and defiantly disobeyed the directions issued to him by the Family Court and by this Court despite grant of opportunities.

39. However, in case, the respondent exhibits his apology by complying with the orders passed by the Family Court and by this Court, in his matrimonial appeal, and makes payment of entire arrears of maintenance within two weeks, and undertakes to continue to pay the same during pendency of HMA No. 638/2018, or till the time the order dated 22.12.2020 continues to remain in force, and tenders an unconditional apology to this Court, we shall consider recalling the punishment of him undergoing simple imprisonment, provided he complies with the aforesaid direction within the next two weeks. However, in case, he does not comply with this direction in the next two weeks, he is directed to surrender before the Jail Superintendent, Central Jail, Tihar, New Delhi, on 09.12.2021.

VIPIN SANGHI, J

JASMEET SINGH, J

NOVEMBER 25 , 2021